

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division

JTH TAX, INC. d/b/a
LIBERTY TAX SERVICE,

Plaintiff,

v.

CIVIL ACTION NO. 2:15cv558

CHARLES HINES,

Defendant.

ORDER

This matter comes before the court on the Motion to Dismiss ("Motion") and Memorandum in Support filed by Plaintiff JTH Tax, Inc. ("JTH Tax") on April 14, 2017. ECF Nos. 66, 67. The Defendant, Charles Hines ("Hines"), filed a Memorandum in Opposition on June 16, 2017, ECF No. 77, and JTH Tax filed a Reply on June 22, 2017. ECF No. 78.

On May 20, 2017, this court referred the Motion and Memorandum in Support to United States Magistrate Judge Robert J. Krask, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Federal Rule of Civil Procedure 72(b), to conduct hearings, including evidentiary hearings, if necessary, and to submit to the undersigned district judge proposed findings of fact, if applicable, and recommendations for the disposition of the Motion. ECF No. 68.

The Magistrate Judge filed the Report and Recommendation ("R&R") on July 19, 2017. ECF No. 80. The Magistrate Judge recommended granting the Motion without prejudice. R&R at 1. By copy of the R&R, the parties were advised of their right to file written objections to the findings and recommendations made by the Magistrate Judge. See id. at 11. On August 3, 2017, Hines filed an Objection to the R&R. ECF No. 81.

I. LEGAL STANDARD

Pursuant to Rule 72(b) of the Federal Rules of Civil Procedure, the court, having reviewed the record in its entirety, shall make a de novo determination of those portions of the R&R to which the Plaintiff has specifically objected. Fed. R. Civ. P. 72(b). The court may accept, reject, or modify, in whole or in part, the recommendation of the magistrate judge, or recommit the matter to him with instructions. 28 U.S.C. § 636(b)(1).

II. DISCUSSION

Plaintiff's Motion to Dismiss the amended counterclaim alleges that the counterclaim failed to comply with Federal Rules of Civil Procedure 8(a), 8(d)(1), and 10(b). ECF No. 66. In the R&R, the Magistrate Judge agrees, recommending that JTH Tax's "motion to dismiss the amended [counterclaim] be granted without prejudice to Hines filing a second amended counterclaim in an effort to comply with Rules 8(a)(2), 8(d)(1), and 10(b)."

R&R at 11. The Magistrate Judge further recommends that Hines be required to file any second amended counterclaim within twenty-one days from the court's order regarding the R&R and JTH Tax's Motion. Id.

In the Objection to the R&R, Hines opposes the Magistrate Judge's recommendation that Plaintiff's Motion be granted. Obj. at 8. Instead, Hines argues that JTH Tax's Motion should be denied. However, Hines agrees with the Magistrate Judge's recommendation, to the extent that filing a second amended counterclaim, "is the proper way to proceed." Id. at 21.

Having reviewed the matter de novo, the court agrees with the Magistrate Judge's recommendation, that the Motion to Dismiss the counterclaim be granted without prejudice to Hines filing a second amended counterclaim in order to comply with the Federal Rules of Civil Procedure, as explained by the Magistrate Judge. R&R at 4. Accordingly, Hines' Objection is hereby **OVERRULED**.

III. CONCLUSION

The court, having examined the Objections to the R&R filed by the Defendant, and having made de novo findings with respect thereto, does hereby **OVERRULE** the Defendant's Objections, and **ADOPT AND APPROVE IN FULL** the findings and recommendations set forth in the R&R of the United States Magistrate Judge, filed on July 19, 2017. ECF No. 80. Accordingly, Plaintiff's Motion is

GRANTED without prejudice to the Defendant filing a second amended counterclaim within twenty-one days of the entry of this Order.

The Clerk is **DIRECTED** to send a copy of this Order to all parties.

IT IS SO ORDERED.

/s/
Rebecca Beach Smith
Chief Judge

REBECCA BEACH SMITH
CHIEF JUDGE

August 24, 2017